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Shariah & Religious Freedom: The Conflict and Choice in Today's Nigeria

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Introduction

The implementation of Shariah law in Nigeria remains a complex and contentious issue, reflecting the country's pluralistic legal system and religious diversity.

Nigeria operates under a dual legal system that incorporates English common law, customary law, and Islamic law (Shariah), creating both opportunities for religious legal autonomy and significant legal tensions. While Shariah was historically restricted to personal and family law among Muslims, its expansion into criminal law in 1999 by several northern states has raised constitutional and human rights concerns, particularly regarding religious freedom and legal equality.

The expansion of Shariah law into criminal justice has generated ongoing debates about the balance between religious obligations and constitutional protections. While proponents argue that Shariah provides a moral and just framework for governance, critics highlight its potential conflicts with Nigeria's secular constitution, especially regarding fundamental rights, such as freedom of religion, equal protection, and fair trial standards. Further complicating this landscape is the emergence of extremist groups, such as Boko Haram, which claim to impose their own version of Shariah through violence and coercion, distorting Islamic teachings and exacerbating public perceptions of Shariah as oppressive. These non-state actors exploit governance failures and public dissatisfaction with the judicial system to establish parallel legal structures, creating additional challenges for the Nigerian state.

The webinar themed, "Shariah and Religious Freedom: The Conflict and Choice in Today's Nigeria" hosted by the Islam & Liberty Network delves into these issues, drawing on the expertise of Dr. Kazeem Olaniyan, a legal scholar based in the University of Ibadan, Nigeria. This research brief examines the

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historical, legal, and human rights dimensions of Shariah implementation in Nigeria, exploring its implications for religious freedom, constitutional law, and governance.

Historical and Legal Context

Nigeria's legal system is a pluralistic blend of English common law, customary law, and Islamic law (Shariah).

Under British colonial rule, Shariah was limited to personal status issues, but at independence Nigeria maintained Shariah courts for civil matters among Muslims. The 1979 and 1999 constitutions affirmed that states could establish Shariah courts of appeal for civil cases involving Islamic personal law (marriage, inheritance, etc.), while also prohibiting any state religion (Olaniyan, 2023). In 1999, following the establishment of Nigeria's constitution, Zamfara State ignited a wave of Shariah expansion by extending Shariah from civil matters to criminal law, a move soon followed by eleven other northern states (Ostien, 2007). This "full Shariah" implementation was framed by proponents as a restoration of the pre-colonial legal order of the Sokoto Caliphate and a response to perceived failures of secular governance. By 2002, twelve northern states (out of 36) had introduced Shariah penal codes, a development that immediately raised constitutional questions about Nigeria's secular framework and legal unity (de Montclos, 2014).

Constitutional provisions underscore the tension inherent in this legal pluralism. Section 10 of the Nigerian Constitution explicitly forbids federal or state governments from adopting any religion as state religion. Section 38 guarantees freedom of thought, conscience, and religion, including the freedom to change one's religion and to manifest it in practice. At the same time, the constitution permits states to establish Shariah courts for civil matters and does not completely bar the enactment of Islamic laws at the state level, which opens a door to diverse interpretations. Notably, Nigeria has no Federal Shariah Court of Appeal; the secular Supreme Court remains the ultimate judicial authority and can hear appeals from Shariah state courts. This constitutional design creates a legal duality: in Shariah-implementing states, Shariah courts operate alongside secular courts, each applying different laws to Muslims and non-Muslims. In practice, Muslims in those states may be tried under Shariah penal codes, while non-Muslims cannot be compelled to submit to Shariah courts without consent. This framework attempts to respect religious freedom through optional jurisdiction, but it also establishes a complex boundary between secular law and Islamic law in Nigeria's federal system (Ogbu, 2014).

Tensions Between Shariah and Religious Freedom

The expansion of Shariah law into criminal justice has generated significant tensions between Islamic codes and Nigeria's guarantees of religious freedom.

During the webinar discussion, Dr. Kazeem Olaniyan elaborated on the four major Sunni schools of thought (Hanafi, Maliki, Shafi'i, and Hanbali), noting that Nigeria primarily follows the Maliki school. He explained that while the schools share a broad agreement on the principles of Shariah, they diverge on specific legal interpretations, particularly in areas like criminal justice. He used the example of *zina* (adultery) to illustrate how different schools categorize and punish such offenses. Olaniyan also pointed out that Shariah is intended to govern the lives of Muslims who voluntarily embrace it, but its application in a multi-religious society like Nigeria raises legal and constitutional questions.

A core controversy is whether the Shariah penal codes violate the constitutional rights of citizens, especially religious minorities and Muslims who hold different interpretations. The federal government's stance in 2002 exemplified these tensions: Nigeria's Justice Minister Kanu Agabi warned northern governors that certain Shariah punishments were unconstitutional and discriminatory against Muslims

themselves. He noted, for instance, that a Muslim convicted of adultery in a Shariah court faced death by stoning, a penalty far harsher than what a non-Muslim would face under secular law for the same offense – violating the principle of equal protection. The federal government urged Shariah states to modify these laws to align with the constitution, arguing that no citizen should be subjected to a harsher punishment due to their religion. This position, however, stopped short of legal action; President Obasanjo’s administration chose not to directly challenge Shariah in court, wary of political fallout. As a result, an uneasy compromise took hold: Shariah penal codes remained in force, but officials quietly used clemency and appeals to prevent their most extreme outcomes from being carried out, avoiding a direct judicial confrontation that could declare Shariah criminal law unconstitutional (The New Humanitarian, 2002).

Another tension lies in the jurisdictional conflicts between Shariah courts and Nigeria’s secular judiciary. A significant portion of the discussion focused on the tensions between Shariah and Nigeria’s federal legal framework. Olaniyan identified marriage laws as one of the primary areas of conflict. While Islamic law allows polygamy, Nigerian criminal law, influenced by English common law, prohibits bigamy. This contradiction creates legal dilemmas for Muslim men who marry more than one wife under Shariah but risk prosecution under secular law. Other areas of contention include divorce, child custody, and inheritance laws, where Shariah provisions sometimes conflict with constitutional guarantees of equality and religious freedom. The existence of multiple legal systems—Shariah law, customary law, and English common law—contributes to a pluralistic yet often contradictory legal framework.

Additionally, any death sentence or amputation ordered by a Shariah court can be appealed up through the secular appellate courts, ending at the Supreme Court. This raises the possibility that the Supreme Court could invalidate Shariah criminal judgments on constitutional grounds. Indeed, lawyers and activists have viewed certain appeals as potential test cases to challenge the legality of Shariah penal codes. In one early instance, a man in Kebbi State (Yahaya Kakale) appealed an amputation sentence, a case seen as a watershed that could determine whether Shariah courts have authority to try criminal cases. Fearing a wholesale nullification of Shariah systems by federal courts, state authorities have often preempted final court showdowns. Strategies include withdrawing cases, pardoning convicts, or commuting sentences before they reach the highest courts. This political management underscores a delicate reality: Shariah implementation persists largely because its most controversial punishments have been curtailed in practice, averting direct clashes with Nigeria’s constitutional guarantees. Thus, an informal balance has emerged – sometimes described as “political Shariah” – where Shariah laws exist on the books to satisfy local constituencies, but the full weight of secular constitutional supremacy quietly limits their application (Human Rights Watch, 2004).

Human Rights Concerns Under Shariah Implementation

Several landmark cases illustrate the conflict and uneasy coexistence between Shariah law and Nigeria’s commitments to fundamental liberties.

Early cases such as Safiya Husseini and Amina Lawal set important precedents. Both women’s convictions for adultery were overturned on appeal by Shariah State Courts of Appeal in 2002 and 2003 respectively, citing procedural errors and the failure to meet the strict evidence requirements under Islamic law (e.g., the impossibility of pregnancy alone proving adultery given the extended gestation doctrines in Maliki jurisprudence). The successful appeals of these cases not only saved the women’s lives but also demonstrated that Shariah appellate judges could avert the implementation of *hudud* penalties in practice, especially under global scrutiny. No case of *rajm* (stoning) or *hadd* amputation ultimately withstood the full appeals process, suggesting an implicit understanding that such punishments would not be allowed to reach final execution. Another instructive case was that of

Buba Bello Jangebe, the first person to suffer amputation under the new Shariah codes in Zamfara in 2000 for cattle theft. His case drew widespread criticism; although his punishment was carried out (before federal intervention), it galvanized local and international human rights groups and arguably made later courts more cautious about upholding amputations. Subsequent amputation sentences (there were dozens in the early 2000s) were often stayed or commuted, and at least one (Yahaya Kakale's case) reached the federal Court of Appeal, positioning it as a possible test of Shariah's constitutionality. However, before the Court of Appeal could issue a sweeping decision, the machinery of state pardons and delays intervened, reflecting a pattern: no definitive ruling from Nigeria's Supreme Court has yet resolved the legality of Shariah criminal law, as cases are managed to avoid that showdown (Human Rights Watch, 2004).

More recently, blasphemy and apostasy cases have highlighted the clash between Shariah-based offenses and constitutional rights. Notably, Shariah penal codes in Nigeria generally omit apostasy as a crime – a deliberate choice to respect the constitutional right to change one's religion. In practice, while social stigma or vigilante threats against apostates exist, there have been no formal prosecutions for leaving Islam. Blasphemy, however, remains criminalized in some northern states' laws as an offense against Islam. A high-profile example is the case of Yahaya Sharif-Aminu, a Kano State resident and musician convicted of blasphemy in 2020. Sharif-Aminu, a Muslim of a minority Sufi order, shared a WhatsApp audio message deemed insulting to the Prophet Muhammad. He was tried in a Kano Shariah court, found guilty of blasphemy, and sentenced to death. This verdict sparked international condemnation and raised questions about freedom of expression and religion. On appeal, the Kano State High Court (a secular court) overturned the death sentence in 2021 due to procedural irregularities, but rather than acquitting him, it ordered a retrial in the Shariah system. Sharif-Aminu's lawyers have taken the case up to the Supreme Court of Nigeria, arguing that Kano's blasphemy law violates the federal constitution and international law (Global Freedom of Expression, 2020).

The Rise of Non-State Actors, Extremist Groups and Political Vacuums

A crucial aspect of the discussion was the role of non-state actors, such as Boko Haram, in enforcing their own versions of Shariah through violent means, raising concerns about the global perception of Shariah being associated with political violence due to extremist organisations like them.

Olaniyan firmly rejected Boko Haram's claim to represent Islamic law, arguing that the group distorts and weaponizes Shariah for political and militant purposes. He emphasized that Boko Haram's ideology contradicts fundamental Islamic teachings, particularly the emphasis on seeking knowledge and justice. He also noted that Boko Haram initially exploited widespread dissatisfaction with Nigeria's criminal justice system, positioning themselves as an alternative legal authority. However, over time, their brutality and imposition of their own extreme interpretation of Islam revealed their true nature as a militant political group rather than a religious movement. Additionally, he referenced other radical factions in Nigeria, such as the Zakzaky movement, which has been involved in clashes with the state. He highlighted that different factions of militants, some claiming to implement Islamic law, are now fighting among themselves for control in certain northern states, such as Zamfara.

Drawing upon Olaniyan's observations of Boko Haram, moderator Dr. Ali Salman made a comparison between Nigeria and Pakistan, describing how extremist groups in both countries have taken advantage of weak governance and public disillusionment with the judicial system. In Pakistan, for instance, the *Tehreek-e-Nafaz-e-Shariat-e-Muhammadi* (TNSM) initially gained legitimacy by offering swift and informal dispute resolution in areas where the state's judicial system was slow and corrupt. Similarly, in Nigeria, Boko Haram capitalized on governance failures, promising an alternative system before revealing their violent and oppressive nature.

Olaniyan acknowledged that systemic corruption, inefficiency, and lack of accountability in Nigeria's legal system have contributed to the rise of extremist groups. He noted that before 2011, Boko Haram had seized control of large swathes of northern Nigeria, with some territories effectively operating under their rule. He argued that addressing these governance failures is critical to preventing extremist groups from gaining further influence. The discussion also touched on whether Nigeria has religious political parties comparable to Jamaat-e-Islami in Pakistan or the Islamic Party (PAS) in Malaysia. Olaniyan clarified that while Nigeria's Constitution prohibits the formation of religious political parties, politicians often use religious affiliations to gain electoral support. He explained that political leaders visit mosques and churches to seek endorsements, effectively using religion as a campaign tool without officially aligning their parties with religious ideologies. He noted that the lack of clear political "party discipline" and democratic culture within Nigerian parties contributes to governance failures, further fueling public disillusionment and creating space for extremist narratives.

Future Research Directions

The complexities of Nigeria's Shariah implementation invite further research into how to balance religious law and human rights in a diverse society.

One important avenue is exploring legal pluralism itself: how can multiple legal frameworks (secular, Shariah, and customary) co-exist without infringing citizens' rights? Comparative studies could examine other multi-religious countries for models of integrating religious laws in state legal systems while upholding universal rights. In Nigeria's case, scholars suggest clarifying the jurisdictional boundaries—possibly by amending the constitution or statutes to explicitly subject Shariah criminal laws to fundamental rights guarantees (Ogbu, 2014). This would ensure that when conflicts arise, courts have a clear mandate to favor human rights norms.

Additionally, as raised during the webinar discussion, what role can the Nigerian Parliament play in mediating conflicts between shariah and constitutional law? Although Olaniyan acknowledged that Parliament has enacted laws recognizing Shariah courts of appeal at the state and federal levels, he pointed out that implementation remains inconsistent. The Constitution mandates that at least one judge in the federal appellate system must be trained in Islamic law, but in practice, leadership decisions often fail to uphold this requirement. Alternatively, should legislative bodies in modern Muslim-majority states function as collective *mujtahids* (jurists who interpret Islamic law)? While such an institutionalization of *ijtihad* (independent legal reasoning) has not fully materialized, it remains a topic of debate in contemporary Islamic legal thought.

Another research direction is the role of interfaith dialogue and civil society in easing tensions. The introduction of Shariah law has at times polarized communities; studying grassroots peacebuilding efforts between Muslims and Christians in affected states could yield insights on fostering mutual respect and understanding. Improved interfaith relations might reduce the politicization of religious law and create a social environment where rights are respected across community lines.

Conclusion

Ultimately, Nigeria's challenge is crafting a form of legal pluralism that upholds rights. Ongoing dialogue between religious leaders, jurists, and human rights advocates is crucial. Some encouraging signs include certain Shariah court of appeal decisions that referenced constitutional principles to void lower court verdicts, suggesting an emerging jurisprudence of balance (Ogbu, 2014). Policymakers are encouraged to build on this by enacting clear rules that no religious law can supersede the constitution's bill of rights, echoing the Justice Minister's 2002 directive that all Nigerians must remain

equal under law (The New Humanitarian, 2002). By addressing gaps in the system through research-based reforms – from court procedure to community education – Nigeria can work toward a more coherent legal system that respects religious freedom while firmly protecting human rights for all its citizens. This equilibrium is delicate but attainable, and Nigeria’s ongoing experience with Shariah implementation will continue to offer lessons on negotiating faith and freedom in a modern state.

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